

E-FILED ON AUGUST 13, 2008

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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☒ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**DECLARATION OF SUSAN M. SMITH
 IN SUPPORT OF USA CAPITAL
 REALTY ADVISORS, LLC'S MOTION
 TO CLOSE CASE AND REQUEST FOR
 FINAL DECREE**

(Affects USA Capital Realty Advisors,
 LLC)

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I, Susan M. Smith, hereby declare and state as follows:

1. On April 13, 2006 (“Petition Date”), USA Capital Realty Advisors, LLC (“USA Reality”), USA Commercial Mortgage Company (“USACM”), USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF”), and USA Securities, LLC (“USA Securities”) (collectively, the “Debtors”) filed petitions seeking relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “Chapter 11 Cases”). By order entered on June 9, 2006, the Court approved the joint administration of the Chapter 11 Cases.

2. Effective as of the Petition Date, Mesirow Financial Interim Management, LLC (“Mesirow”) has been employed as crisis managers for the Debtors, and Thomas J. Allison of Mesirow has served as the Debtors’ Chief Restructuring Officer. I am employed by Mesirow as a Senior Vice President, and I have worked extensively for the Debtors and have overseen substantial aspects of these cases under Mr. Allison’s direction.

3. This Declaration is based on my personal knowledge or, if so stated, upon information and belief. Thus, all matters set forth in this Declaration are based on (a) my personal knowledge, (b) my review of relevant documents and records, (c) my view, based upon my experience and knowledge of the Debtors’ business and financial condition, and/or (d) as to matters involving United States bankruptcy law or rules, my reliance on advice of bankruptcy counsel to the Debtors. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

4. On August 13, 2008, USA Realty filed its Final Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“Final Report”) pursuant to Article VIII, Section U of the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”), and Paragraph 75 of the Court’s “Order Confirming the Debtors’ ‘Third Amended Joint Chapter 11 Plan of Reorganization,’ as Modified Herein” (Docket No. 2376) (the “Confirmation Order”). Unless otherwise stated, all capitalized words and terms used herein are defined in the confirmed Plan. The Final Report and this Declaration are submitted in support of

1 USA Realty's Motion to Close Case and Request for Final Decree ("Motion to Close") filed
2 contemporaneously herewith.

3 5. As set forth below, as of this date, the USA Realty Estate has been fully
4 administered.

5 **I. Transfer of Assets and Distributions Made to Date**

6 6. All assets in the USA Realty Estate have been distributed in accordance with the
7 Plan. As discussed below, all administrative expense claims, allowed proofs of claim, and
8 allowed scheduled claims (other than USACM's scheduled claim) have been paid in full or
9 provision has been made to pay them.

10 **II. Resolution of Proofs of Claim Filed Against USA Realty**

11 7. As of the Effective Date, 67 proofs of claim had been filed against USA Realty.

12 8. All proofs of claim filed against USA Realty have been withdrawn or disallowed
13 except (A) claim number 10726-00045 filed by the Internal Revenue Service (the "IRS Claim")
14 which, pursuant to a stipulation entered into with USA Realty and approved by Order dated June
15 12, 2007 (Docket No. 3957), has been allowed as a \$1,000 unsecured non-priority claim, and (B)
16 claim number 10726-00030 filed by the Pension Real Estate Association as an unsecured non-
17 priority claim in the amount of \$2,585 (the "PREA Claim"), and to which no objection was filed
18 (the "PREA Claim").

19 9. The PREA Claim and IRS Claims have been paid in full.

20 10. Thus, all proofs of claim filed against USA Securities have now been resolved.

21 **III. Resolution of Scheduled Claims**

22 11. On June 15, 2006, USA Realty filed its Schedules listing eight unsecured non-
23 priority claims totaling \$125,224.15 (Docket No. 673).

24 12. On June 8, 2007, USA Realty filed an omnibus objection to the scheduled claims of
25 Beadle McBride, Kummer Kaempfer Bonner Renshaw & Ferrario, and Santoro Driggs asserting
26 that USA Realty was no longer liable on account of these claims since the parties had
27 affirmatively sought payment of their claims from other Debtors (Docket No. 3919). By Order
28 dated July 31, 2007, the Court sustained USA Realty's objection thereby disallowing the

1 scheduled claims of Beadle McBride, Kummer Kaempfer Bonner Renshaw & Ferrario, and
 2 Santoro Driggs in their entirety (Docket No 4386).

3 13. The remaining claims listed on USA Realty's Schedules are those of Intershow
 4 (\$9,795), PREA (which has been superseded by the PREA Claim discussed above), RR Donnelley
 5 Receivables Inc. (\$160), Transfer Solutions (\$2,508.42), and USACM (\$40,277) (the "USACM
 6 Scheduled Claim"). Except for the USACM Scheduled Claim, these scheduled claims have all
 7 been paid in full.

8 **IV. Resolution of Post-Petition Management Fees Issue**

9 14. As of the Confirmation of the Plan, certain disputes between USACM and DTDF
 10 were left unresolved with the expectation that the parties would work towards the eventual
 11 resolution of these issues. *See* Disclosure Statement at pp. 73-74. Included among these
 12 unresolved issues was the "payment, waiver, refund, or other treatment" of post-petition
 13 management fees purportedly owed by DTDF to USACM through USA Realty. *See* Plan at
 14 § IV.E.5.c. This issue was to be resolved as "mutually agreed upon" by the USACM Trust and the
 15 Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Reorganized DTDF"). *See*
 16 *id.* These post-petition management fees were the only remaining assets in the USA Realty estate
 17 as of the filing of the Third Report.

18 15. After extensive negotiations, the USACM Trust and the Reorganized DTDF
 19 reached a resolution of the claims between them, including USACM's direct or indirect claim
 20 against the Reorganized DTDF to any or all of the post-petition management fees owed by the
 21 Reorganized DTDF to USA Realty. This settlement (the "USACM Trust/Reorganized DTDF
 22 Settlement") was included in the "Motion to Approve Settlement Agreement with USA Capital
 23 Diversified Trust Deed Fund, LLC with Certificate of Service" filed on March 13, 2008 (Docket
 24 No. 5979) and approved by the Court by Order dated April 1, 2008 (Docket No. 6091).

25 16. The only remaining assets in USA Realty available to pay the remaining
 26 administrative, priority and unsecured claims against USA Realty were the unpaid post-petition
 27 management fees owed by the Reorganized DTDF to USA Realty and an equity interest in
 28 DTDF. This being the case, USA Realty confirmed with the USACM Trust that the USACM

Trust/Reorganized DTDF Settlement resolved all claims the USACM Trust would have against USA Realty that might be payable from monies recovered from Reorganized DTDF. Consequently, the Reorganized DTDF and USA Realty agreed that a payment by the Reorganized DTDF of the amount necessary to pay all remaining administrative, priority and unsecured claims allowed or scheduled in the USA Realty case (except for the USACM Scheduled Claim) would be in full satisfaction of the claim USA Realty had against the Reorganized DTDF for unpaid post-petition management fees and for any distribution that would be made on account of the DTDF interest. This payment has been made, and all administrative, priority and unsecured claims allowed or scheduled in the USA Realty case (except for the USACM Scheduled Claim) have been paid as follows:

| <u>Claimant</u> | <u>Allowed Amount of Claim</u> | <u>Payment</u> |
|---|--------------------------------|----------------|
| <u>Administrative Expenses¹</u> | | |
| Mesirow Financial | N/A | \$8,544.00 |
| Ray Quinney & Nebeker | N/A | \$15,000.00 |
| Schwartz & McPherson | N/A | \$10,353.00 |
| LeAnn Weese | N/A | \$2,950.00 |
| U.S. Trustee – 2 nd Quarter | N/A | \$325.00 |
| U.S. Trustee – 3 rd Quarter ² | N/A | \$325.00 |
| Miscellaneous (Bank fees, etc.) | N/A | \$930.00 |

Proofs of Claim

| | | |
|----------------------------|------------|------------|
| Internal Revenue Service | \$1,000.00 | \$1,000.00 |
| Pension Real Estate Assoc. | \$2,585.00 | \$2,585.00 |

¹ These administrative expenses are comprised of post-Effective Date expenses that remain unpaid.

² The U.S. Trustee's fee for the third quarter of 2008 is expected to be \$325. This will be paid out of the funds distributed to Ray Quinney & Nebeker.

Scheduled Claims

| | | |
|------------------------------|------------|------------|
| Intershow | \$9,795.00 | \$9,795.00 |
| RR Donnelley Receivables Inc | \$160.00 | \$160.00 |
| Transfer Solutions | \$2,508.42 | \$2,508.42 |

| | |
|--------------------------|-----------------|
| Total Distributed | \$54,150 |
|--------------------------|-----------------|

| | |
|---|-------------|
| Percentage Paid on Account of Unsecured Claims | 100% |
|---|-------------|

V. Resolution of Litigation

17. All motions, contested matters, and/or adversary proceedings involving USA Realty have been resolved.

18. On or prior to January 18, 2007, the following three appeals from the Confirmation Order were filed, which were ultimately assigned to the United States District Court for the District of Nevada (the "District Court"): (a) an appeal by USA Investment Partners, LLC, designated as District Court No. 07-00138 (the "IP Appeal"); (b) an appeal by Debt Acquisition Company of America V, LLC, designated as District Court No. 07-00160 (the "DACA Appeal"); and (c) an appeal by the so-called "Lenders Protection Group" and the Jones Vargas Direct Lenders, designated as District Court No. 07-00072 (the "LPG Appeal") (collectively, the "Appeals").

- a. Pursuant to USA Realty's motion to dismiss, the District Court has entered an Order dismissing the IP Appeal with prejudice, and that Order is now final. *See* IP Appeal Docket No. 32.
- b. Pursuant to a stipulation that was approved by an Order entered by the District Court on July 12, 2007, USA Realty has been dismissed from the DACA Appeal. *See* DACA Appeal, Docket No. 77.

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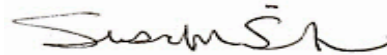
c. Pursuant to a stipulation that was approved by an Order entered by the District Court on July 11, 2007, USA Realty has been dismissed from the LPG Appeal. *See* LPG Appeal, Docket No. 98.³

19. On July 7, 2007, Compass filed a “conditional” complaint against, in relevant part, USA Securities and the other Debtors, designated as Adversary Proceeding No. 07-01105 (the “Compass Proceeding”), seeking to revoke the Confirmation Order. On October 26, 2007, Compass filed a Notice of Dismissal voluntarily dismissing USA Realty from the Compass Proceeding. *See* Compass Proceeding, Docket No. 16.

VI. Dissolution of USA Realty

20. On July 30, 2008, USA Realty was formally dissolved as an entity under the laws of the State of Nevada

Dated this 13th day of August, 2008



Susan M. Smith

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³ After the dismissal of USA Securities from the DACA Appeal and LPG Appeal, the District Court issued its joint opinion affirming the Confirmation Order in both appeals.